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U.S. DISTRICT COURT
U.S. BANKRUPTCY COURT
DISTRICT OF IDAHO

OCT 12 2004

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InterDent Service Corporation

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF IDAHO

POCATELLO DENTAL GROUP, P.C., an
Idaho professional corporation,

Plaintiff,

v.

INTERDENT SERVICE CORPORATION, a
Washington corporation,

Defendant.

INTERDENT SERVICE CORPORATION, a
Washington corporation,

Third-Party Plaintiff,

v.

Case No. CV-03-450-E-LMB

INTERDENT SERVICE
CORPORATION'S OPPOSITION TO
POCATELLO DENTAL GROUP'S
MOTION FOR A TEMPORARY
RESTRAINING ORDER

INTERDENT SERVICE CORPORATION'S OPPOSITION TO POCATELLO DENTAL GROUP'S
MOTION FOR A TEMPORARY RESTRAINING ORDER - 1

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POCATELLO DENTAL GROUP, P.C., an Idaho professional corporation; DWIGHT G. ROMRIELL, individually; LARRY R. MISNER, JR., individually; GREGORY ROMRIELL, individually; ERROL ORMOND, individually; and ARNOLD GOODLIFFE, individually,

Third-Party Defendants.

I. INTRODUCTION

Plaintiff Pocatello Dental Group ("PDG") moves the Court to "restrain" defendant InterDent Service Corporation ("ISC") from "refusing to immediately surrender" three categories of items: (1) contact information for current PDG patients, (2) contract information for PDG patients with appointments scheduled after October 2, 2004 (essentially a subset of the first request) and (3) the "personal property" of PDG dentists (that PDG admits it cannot define). All this relief in the form of a mandatory injunction PDG would require (a) at ISC's sole expense; (b) without any contractual basis; (c) without any underlying claim for relief. Setting aside momentarily the myriad of substantive and procedural problems with this request, PDG's race to the courthouse instead of seeking to resolve a business dispute through rational, adult discussion is symptomatic of its approach to this case. From misdirecting the mail, to assisting its dentists in avoiding noncompete agreements, to (on the part of its dentists) taking six months to finally sign a protective order, to directing patients not to pay their bills, PDG and its dentists have consistently worked to create problems rather than seeking solutions. (Affidavit of Bruce Call ¶ 7 (directing patients not to pay).)

Unfortunately, their strategy essentially has succeeded. By October 1, 2004 PDG and its dentists had made the Pocatello practice so uneconomic as a result of their continuing breaches of the Management Agreement, that ISC was forced to terminate the contract. As has been their intention throughout, PDG's dentists are now free from their noncompete agreements. While

their breaches entitle ISC to recover its lost profits for the next 32 years, obtaining a judgment is one thing; collecting it, as is touched upon in ISC's pending motion for leave to deposit funds into court, is something else entirely.

With regard to the present motion, it can easily be denied because it is an improper mandatory injunction and for the lack of any contractual basis or basis in the pleadings. If the Court feels it proper to consider the issues further, the reality is that ISC has made a good faith attempt to resolve the underlying issue regarding patient contact information. It took ISC over two days to convince PDG to take responsibility for its patient files. (Call Aff. ¶¶ 2-3). ISC offered to direct patients to contact PDG at a telephone number of PDG's choosing, allowing PDG to handle its own scheduling. PDG has inexplicably refused this offer and instead, again characteristically, simply misappropriated the telephone number that had been paid for by ISC (in part to direct patients that they do not have to pay their bills). (*Id.* ¶ 5, 7.) Along with this misappropriation, PDG chose to file the present motion. As detailed below, the Court should deny the motion.

II. BACKGROUND

Long-standing problems between PDG and ISC, including but not limited to the departures of numerous PDG dentists from their practice with ISC and the refusal of the remaining PDG dentists to enforce the respective non-competition agreements, left ISC with little choice but to close the Pocatello office. After providing PDG with the requisite notice under the Management Agreement between the parties (*Id.* ¶ 2), the office was closed on the afternoon of October 1, 2004.

Unfortunately, this closure led to an incident in which Dr. Greg Romriell and his family members became hostile and physically and verbally threatened ISC employees and contract workers. (*Id.* ¶ 3.) The police even had to direct all parties to leave the scene as a "cooling off"

period to try to maintain order. (*Id.*) This motion arises in the aftermath of that incident, so the already poor relations between the parties have deteriorated much further. After failing in their use of brute force to punish ISC for exercising its contractual rights, PDG resorted to making unilateral demands that are the subject of this motion, while at the same time ignoring ISC's attempts to try to find a solution. (*Id.* ¶ 3-5). PDG also redirected the office telephone number—a number for which ISC has been paying. (*Id.* ¶ 5). ISC has recently learned that Dr. Greg Romriell has informed patients that call this number that they do not have to pay their bills. (*Id.* ¶ 7.)

III. ARGUMENT

PDG's motion is improper on a number of levels. First, its request does not actually seek to either maintain the status quo or to "restrain" ISC from doing anything. *Gamlen Chem. Co. v. Gamlen*, 79 F. Supp. 622, 631 (D.C. Pa 1948) ("A preliminary injunction may not be used to subvert the existing status, or to take property out of the possession of one party and put it into the possession of the other."). Its request that the Court restrain ISC from "refusing to immediately surrender" certain information is essentially a motion to compel. Rather than preserving the status quo, PDG is seeking to change it.

A second and related point is that the Court cannot grant the requested relief because to do so would be a mandatory injunction. If the Court were to grant PDG's request, the question of whether PDG is entitled such information ends; there is nothing further for the Court to decide. A mandatory injunction is an extraordinary remedy and is "not regarded with judicial favor." *State of Idaho v. Freeman*, 529 F. Supp. 1007, 1154 (D Idaho 1981) (internal citation omitted) (overruled on other grounds). It should only be issued with caution and in "great necessity." *Id.* Given that there are other alternative available (alternatives that PDG has inexplicably rejected), this is not a circumstance where a mandatory injunction is appropriate.

Third, the Management Agreement is terminated, but even if it had not been, PDG identifies no contractual basis to require ISC to provide the requested information at ISC's sole expense. PDG cites only to contract provisions relating to the fact that its dentists are responsible for practicing dentistry. This provision imposes no duties upon ISC. Instead, ISC has satisfied its contractual duties by finally convincing PDG to accept its patient files after PDG refused to accept them for over 48 hours. (Management Agreement Art. 6.2(c)(2).)

Fourth, PDG has no underlying claim against ISC that would allow the requested relief. While PDG has brought claims against ISC relating to alleged breaches of the Management Agreement it has asserted no claim for injunctive relief for the data requested, let alone for providing the data at ISC's sole expense. As the Court has made clear, the only way to assert such a claim now would be to move to supplement its pleadings, a step PDG has refused to take despite arguing strenuously about ISC's need to do so to allege events after the filing of a pleading.

Finally, with respect to PDG's request that ISC be restrained from "refusing to immediately surrender to the plaintiff and its dentists their personal property," this request must be denied because it lacks the specificity required under the Federal Rules. Federal Rules of Civil Procedure 65(d) requires that restraining orders "shall be specific in terms; [and] shall describe in reasonable detail, and not by reference to the complaint or other document, the acts or acts sought to be restrained." ISC's request for the return of personal property is not specific at all. Indeed, Dr. Greg Romriell admits that the "property cannot yet be described because I have not had the time to do an inventory or contact other dentists and hygienists of Pocatello Dental Group to obtain a description of the property taken by ISC." (Affidavit of G. Romriell ¶ 2.) Given this admission, it would simply not be feasible for the Court to do other than deny PDG's

request for the "return" of property that PDG cannot describe. And, in any event, ISC does not believe it has any such property. (Call Aff. ¶ 4).

IV. CONCLUSION

As detailed above, the Court should deny PDG's motion for a temporary restraining order. Failing that, PDG should be required to post a bond sufficient to cover all of ISC's costs in recovering the data sought and its attorneys fees relating to this motion.

DATED: October 12, 2004.

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CERTIFICATE OF SERVICE

I hereby certify that I served the foregoing **INTERDENT SERVICE CORPORATION'S OPPOSITION TO POCATELLO DENTAL GROUP'S MOTION FOR A TEMPORARY RESTRAINING ORDER** on the following named person(s) on the date indicated below:

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